Supreme Court, U.S.
FILED
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No. 93-1329

In The

Supreme Court of the United States

October Term, 1993

DENNIS DiPINTO and KIERAN CUNNINGHAM,

Petitioners,

vs.

JOHN SPERLING, in his capacity as President of Lodge #8 of the Fraternal Order of Police; STEVEN D. WEAVER, in his capacity as Chief of Police; FRANK EDWARDS, in his capacity as City Manager; ROBERT McKENNA, in his capacity as Mayor; and TERESA CROUTU, in her capacity as Personnel Director, all for the City of Newport, Rhode Island,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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4 pp

STATEMENT OF THE CASE

The crux of this matter is the termination of the Petitioners by the City of Newport from employment on June 26, 1989.

Petitioners disputed this termination in separate actions in the Newport County Superior Court, Newport, Rhode Island. Neither petitioner prevailed. Petitioner DiPinto failed to appeal his adverse determination to the Rhode Island Supreme Court. Petitioner Cunningham appealed to the Rhode Island Supreme Court and lost.

Both petitioners filed a subsequent consolidated action in the United States Federal District Court for the District of Rhode Island alleging violations of the collective bargaining agreement and their civil rights (see 42 USC Sec. 1983), arising from the city's failure to afford them a termination hearing.

Their complaint also asserted claims against the Fraternal Order of Police Lodge No. 8. The Rhode Island District Court adopted the recommended decision of a Magistrate Judge, and entered Summary Judgment against the petitioners. The United States Court of Appeals for the First Circuit affirmed.

ARGUMENT

A. Petitioners have misconstrued the doctrine of res judicata.

Petitioners are concerned with, quite naturally, the effect their termination from the City of Newport Police Department has had on their lives. They describe that

effect on page 30 of their petition as a continued defamation and slander of their names and reputations. Petitioners construe this as a post-judgment act; thus, from their perspective, presumably avoiding the doctrine of res judicata. However, the United States Court of Appeals for the First Circuit characterized their complaints as prejudgment complaints which, in fact, they were. Petitioners' concern focuses on local news media descriptions of the circumstances leading up to the respective dismissals. Local newspapers widely publicized the circumstances surrounding the respective petitioners' dismissal, something the City of Newport had no control over.

Petitioners, despite the doctrine of res judicata, simply can't understand why they can't relitigate the circumstances of their dismissal. This fundamental misunderstanding is their problem alone and not respondents'.

B. A Federal Court must accord a state court the same preclusive effect it would receive in the state where it was rendered.

Petitioners, generally, complain about the doctrine of res judicata. Despite this complaint this Court has, on a number of occasions, affirmed that federal courts must accord a state court judgment the same preclusive effect it would receive in the state where it was rendered. *Allen vs. Curry*, 449 US 90, 96 (1983).

CONCLUSION

Petitioners have misconstrued the doctrine of res judicata. This Court has, on a number of occasions, referred to a federal court according a state court judgment the same conclusive effect it will receive in the state where it was rendered. This principle is well-traveled. For the above reasons, this petition should be denied.

Respondents specifically refer the Court to Petitioners' Appendix, in particular, Appendix B – the opinion of the United States Court of Appeals for the First Circuit, dated November 5, 1993, found at page 2a of Petitioners' Petition. Additionally, reference is made to the Recommendation of the Magistrate Judge, dated December 18, 1992, at page 26a. Respondents would also refer to Appendix H – the Brief and Motion for Summary Judgment for the Defendants, City of Newport, found at page 41a, of the appendix.

Dated: April 18, 1994.

Respectfully submitted,

Respondents
City of Newport
By its Attorney,

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February Term, 1994

Dennis DiPinto and Kieran Cunningham,

PETITIONERS,

VS.

John Sperling, in his capacity of President of Lodge #8 of the Fraternal Order of Police, Steven Weaver, in his capacity as Chief of Police, Frank Edwards in his capacity as City Manager, Robert McKenna, in his capacity as Mayor, and Teresa Croutu, in her capacity as Personnel Director, all for the City of Newport, Rhode Island.

RESPONDENT

On Petition For Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT, JOHN SPERLING, IN HIS CAPACITY OF PRESIDENT OF LODGE #8 OF THE FRATERNAL ORDER OF POLICE'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Are the petitioners precluded from litigating "fair representation" claims against the respondent, John Sperling, in his capacity as President of Lodge #8 of the Fraternal Order of Police (Union) in the Federal Trial Court, where a final judgment has been rendered previously in the Rhode Island State Superior Court dismissing petitioners' wrongful termination claims?

2. Did the Federal Trial Court correctly find that the petitioners are unable to establish prima facie case of wrongful termination in the Federal Trial Court, in light of the prior judgment rendered in the Rhode Island Superior Court, and petitioners' failure to adduce any facts to show that the Union acted arbitrarily or in bad faith?

TABLE OF AUTHORITIES

1. Kissinger v. United States Postal Service, 801 F.2d 551 (1st Cir. 1986). 5

2. Vaca v. Sipes, 386 U.S. 171 1967 5

STATEMENT OF THE CASE

A. Nature of the Case

The respondent, John Sperling (Union) hereby adopts the brief of the respondent, The City of Newport, et al in its entirety, and the appendices of the petitioners and the respondent, The City of Newport, et al. As will become apparent herein, the petitioners will be unable to establish a prima facie case of "unfair representation" against the Union if the petitioners are barred by res judicata and/or collateral estoppel from establishing that they have "meritorious" claims for wrongful termination against the City of Newport.

The order of the Federal Trial court dated May 18, 1993 from which an unsuccessful appeal was taken to the U.S. Court of Appeals for The First Circuit, accepted the Report and Recommendation of United States Magistrate Judge Timothy M. Boudewyns (filed April 19, 1993) granting summary judgment in favor of respondent, John Sperling (Union). The basis for the report and recommendation is that the petitioners are estopped from raising wrongful termination claims against the City of Newport under the principles of res judicata and collateral estoppel, and thus are unable to establish the elements of an "unfair representation" claim.

B. Statement of Facts

The respondent, John Sperling (Union) hereby adopts the statement of the case of respondent, The City of Newport, et al in its entirety. In addition, the respondent, Union states that both